



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Automation Engineering, Inc.

File: B-239782, B-239784, B-239785, B-239786,
B-239787, B-239788, and B-239789

Date: September 20, 1990

Edwin D. Rush for the protester.
Dana C. Lindsay, Esq., Department of Energy, for the agency.
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest to the General Accounting Office filed more than 10 working days after notice of initial adverse agency action on agency-level protest is untimely and will not be considered.
2. Solicitations for component parts of a monitoring system for nuclear reactors restricted to brand names only are unobjectionable where the procuring activity reasonably determines that only the brand name sources will satisfy its critical minimum needs.

DECISION

Automation Engineering, Inc. (AEI) protests seven request for proposals (RFP) issued as restricted acquisitions by Westinghouse Savannah River Company (WSRC) for components of the Reactor Operations Monitoring System (ROMS).^{1/} WSRC issued the solicitations pursuant to its prime contract with the Department of Energy (DOE), for management and operation of DOE's Savannah River nuclear facility.

The protests are dismissed in part and denied in part.

^{1/} The protested solicitations include RFP's Nos. B17867-EL, 85018MH-1, B17812-EL, A49640-EJL, A49635-EL, 85024MH, and B17582-EL. Each solicitation is for a different component of the ROMS.

The Savannah nuclear reactors are the only nuclear reactors available for production of an essential nuclear material (tritium) for the nation's nuclear weapons. ROMS is a specialized data acquisition and safety system specifically designed for use in reactor operations at the Savannah River facility. ROMS is comprised of computer components such as computer boards, chips, disk drives, and associated hardware and software required to make the various hardware components operate as a system.

DOE plans to use ROMS to replace the safety computers, crossbar switches (which supply data to control computers), and auxiliary recorders, used to monitor and control the Savannah River site reactors. The safety computers provide the primary protection against significant core damage in the reactors by alerting operators to unsafe conditions which could cause core melting and release of radioactive material. The control computers are used for control of reactor power levels, to perform calculations, and provide operator guidance. The auxiliary recorders are for manual operation and share inputs with both the control and safety computers. The purpose of the proposed ROMS is to integrate functions performed by these three systems to improve the reliability, safety, and productivity of the reactors. DOE reports that the procurement of ROMS is critical to national security.

ROMS was originally conceived and developed by E.I. DuPont de Nemours & Company, the previous management and operation contractor for the Savannah River facility. In 1987, DuPont issued a request for quotations (RFQ) for either component parts of the system which would have to be integrated by Savannah River personnel or a complete system provided by a firm specializing in systems integration. The integration effort was anticipated to include the assembly of the hardware components, documentation, design and writing of custom software and commercial software modifications, and testing of the completed system. AEI received the contract for all hardware purchases and system integration of a prototype ROMS, referred to as phase I. Initially, the agency anticipated that after the prototype system was accepted, additional systems based on the prototype, would be acquired in a phase II program. After receipt of the initial prototype, DuPont, and now WSRC, continued to enhance the design. Based on the changes that have evolved, WSRC decided to forego system integration by a third party for the phase II effort and instead purchase component hardware and software parts directly from the manufacturers, and perform the systems integration using WSRC engineering personnel for all additional ROMS required by WSRC. WSRC prepared sole-source justifications for each component part,

limiting the procurement to the stated manufacturer's brand name only. Since AEI was neither a manufacturer nor an authorized distributor of any component, it was not initially solicited for any phase II procurement of the component parts.

In response to AEI's contentions made in an agency-level protest, DOE directed WSRC to solicit AEI for all ongoing and future ROMS Phase II components and/or integration acquisitions. WSRC subsequently modified its procurement strategy to allow AEI to participate, but maintained its brand name only restrictions.

The solicitations in question were issued in May 1990. AEI filed these protests with our Office, challenging the proposed sole-source brand name awards. AEI argues that the procurement should be revised to allow proposals to be submitted on a system integration basis rather than on a component basis. AEI also maintains alternatively that brand name sole-source procurements are not required and that the solicitations should have been issued on the basis of performance specifications in order to provide AEI the opportunity to propose components which meet those specifications.

Our Office does not review subcontract awards by government prime contractors, except where the award of the subcontract is "by or for" the government. 4 C.F.R. § 21.3(m)(10) (1990). Since WSRC was procuring ROMS for the government in its capacity as an agent under its prime contract with DOE, we will review the proposed subcontract awards to determine whether they are consistent with the fundamental principles of federal procurement law as set forth in the statutes and regulations that apply to direct procurement by federal agencies. Fairfield Mach. Co., Inc., B-228015 et al., Dec. 7, 1987, 87-2 CPD ¶ 562.

In direct federal procurements, under the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(c)(1) (1988), a noncompetitive award is permitted where the property or services needed by the agency are available from only one source and no other types of property or services will satisfy the needs of the agency. We generally will not object to sole-source awards, including subcontract sole-source awards, where the agency or prime contractor reasonably concludes that only one known source can meet the government's needs. See Meteor Communications Corp., B-235674, Sept. 15, 1989, 89-2 CPD ¶ 235.

AEI first maintains that the most economical way to satisfy the ROMS phase II requirements is to allow offerors to submit proposals based on a system integration effort. To the extent AEI is objecting to WSRC's decision to integrate ROMS phase II components in-house, we find its protest to be untimely. AEI initially filed an agency-level protest with DOE on November 14, 1989. In its decision of March 9, 1990, and received by AEI on March 14, DOE specifically determined that AEI had not shown that WSRC's decision to procure ROMS phase II on a component basis and to integrate the system in-house was improper. AEI filed these protests with our Office on May 23, after issuance of the solicitations. When a protest is filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of receiving notice of initial adverse agency action in order to be considered timely. 4 C.F.R. § 21.2(a)(3). AEI's May 23 protest to our Office objecting to WSRC's decision to procure ROMS phase II on a component basis is untimely since it was filed more than 10 working days after AEI's March 14 receipt of an adverse decision by DOE. Philadelphia Maintenance Co., Inc., B-235399, Aug. 11, 1989, 89-2 CPD ¶ 132.

Next, concerning the proposed sole-source brand name awards, the protester argues that the solicitations unduly restrict competition and that performance specifications could have been used based upon its prototype system. The protester states that it would have fully investigated other manufacturers of similar components to determine whether or not other devices could be configured in a manner consistent with the requirements.

The agency reports that ROMS is a critical safety and monitoring system and that in order to facilitate maintenance, operator training and operations, all five phase II systems must be identical and be based on components in the prototype as modified by additional agency hardware development.^{2/} The agency maintains that any change in the hardware components in the system has a ripple effect on the hardware and software design of the overall system because of the high performance and tight coupling of the system design. Even a slight difference in hardware would require significant engineering effort to

^{2/} A lengthy agency development and validation effort identified flaws in the performance of the prototype hardware which were corrected with new hardware substituted. The agency believes that the final development system, with its specific components, will ensure successful operation of ROMS.

modify software, firmware, and hardware and to revalidate overall system performance before installation in the reactors. The agency states that identical hardware is absolutely essential to ensure that ROMS II will:

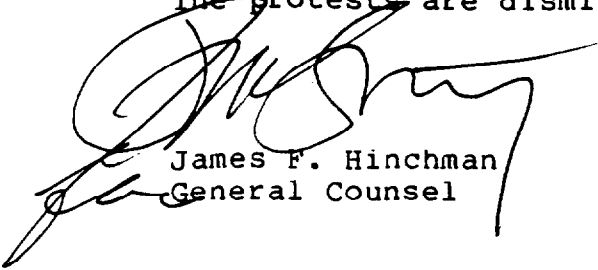
(1) function as designed when integrated with tested and validated software and firmware and reactor hardware; (2) meet established reliability and quality assurance standards for reactor safety systems; and (3) minimize the potential for mistakes by reactor operators and systems maintenance engineers. The agency states that substitution of other functional "equivalent" components would defeat the purpose of the development system and system validation, and would require retesting, modification of existing proven software, firmware, and hardware, as well as revalidation of this critical system.

The record shows that ROMS is a critical national security item and that ROMS represents the culmination of a lengthy development and validation program integrating ROMS hardware, software, and firmware with reactor hardware. The agency's integration and testing of the system, with its specific components, have been performed down to the level of individual integrated circuits, and software and firmware have been developed to directly address individual circuit boards. Based on this testing and validation of the development system, the agency seeks to purchase identical components of the validated system. We think this decision is reasonable. Simply stated, the agency has a uniquely developed system that, in the agency's technical view, will perform successfully, and the agency will not accept the risk of substituting "equal" components into its validated system. In view of the admittedly critical application of the system, we think the agency reasonably concluded that any risk of substitute parts was completely unacceptable.

While AEI proposes to "investigate other manufacturers of similar components to determine whether or not other devices could be configured in a manner consistent with the requirements," this amounts, in essence, to a new system integration effort. We do not believe the agency is unreasonable in its decision not to risk delaying the

installation of the system based on AEI's belief that other components are available that could meet its needs.3/

The protests are dismissed in part and denied in part.



James F. Hinchman
General Counsel

3/ Since we have concluded that the agency's brand name only justification was reasonable, we will not address the other issues raised by the protester concerning allegedly improper "pre-bid" negotiations by the agency with the brand name manufacturers, allegedly insufficient first article testing requirements, and insufficient time to submit offers.